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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/356,771	07/16/1999	JOSEPH E. PORCELLI	1310-2	8276

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EXAMINER

MORRISON, NASCHICA SANDERS

ART UNIT PAPER NUMBER

3632

DATE MAILED: 03/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/356,771

Applicant(s)

PORCELLI, JOSEPH E.

Examiner

Naschica S Morrison

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is the third Office Action for serial number 09/356,771, Car and Truck Beverage Holder, filed on July 16, 1999. Claims 18-23 are pending.

### ***Continued Prosecution Application***

The request filed on 1/22/02 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/356771 is acceptable and a CPA has been established. An action on the CPA follows.

### ***Claim Objections***

Claim 21 is objected to because of the following informalities: on line 14, insert -- ,-- after "containers". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding lines 3-7, applicant claims a rectangular tray having four side walls *each having a top edge border*

*collectively defining a rectangular opening* and at least two of the side walls disposed opposite one another having at least *two openings therethrough disposed beneath the top edge border*. Regarding lines 14-16, applicant claims four fingers each *depending from one of said top edge borders of said opposite walls* such that they extend *downwardly into a different one of said sidewall openings*. The specification does not teach the tray of Figures 4 and 5 comprising four side walls each having a top edge border to define a rectangular opening, wherein at least two of the side walls have openings therein, and four fingers depending downwardly from the top edge borders into the openings in the side walls.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 recites the limitation "said rectangular basket" in lines 8-9. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,938,160 to Hartmann et al. (Hartmann) in view of U.S. Patent Des. 355,336 to Dickey et al. (Dickey), and further in view of U.S. Patent 5,860,559 to Wang. Regarding claims 18 and 20, Hartmann discloses a plastic beverage container holder comprising: a basket (14) having four side walls (sections of 15 located between protrusions 13 - Fig. 3) each having a top edge (at 15 - Fig. 1) collectively defining a top end opening, at least two of the side walls disposed opposite one another having at least two openings therethrough disposed beneath the top edge border, four resilient fingers (16) coupled to the basket and depending from one of the top edge borders such that they each extend downwardly and inwardly into a different one of the side wall openings, and a generally U-shaped hook (18) attached to and extending above the basket. Hartmann does not disclose the basket and opening being rectangular. Dickey discloses a container holder (Fig. 1) comprising a rectangular basket defining a rectangular opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the basket to be rectangular in shape because one would have been motivated to provide a beverage container holder for rectangular beverage containers as taught by Dickey (Claim, lines 1-2). Hartmann also fails to disclose the fingers having a V-shaped profile. Wang discloses a beverage container holder (Fig. 2) including a plurality of springy retaining members (2) having a generally V-shaped profile when viewed in a vertical plane with the point of the V extending towards a central opening. It would have been obvious to one of ordinary

skill in the art at the time the invention was made to have modified the holder by including V-shaped retaining members because one would have been motivated to provide a means for securely gripping the cup while also permitting easy removal as taught by Wang (col. 2, lines 7-22). Regarding claim 19, Hartmann in view of Dickey and further in view of Wang does not disclose the holder being a single unitary member. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the holder to be unitary because one would have been motivated to reduce assembly time and manufacturing costs. Furthermore, one-piece construction, in place of separate elements fastened together, is a design consideration within the level of ordinary skill of the art.

Claims 21 and 23 (considering a subcombination) are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,928,865 to Lorence et al. (Lorence) in view of Dickey in view of U.S. Patent 5,297,767 to Miller et al. (Miller) and further in view of Wang. Regarding claims 21 and 23 (as best understood), Lorence discloses a beverage container holder comprising: a rectangular tray (62) including two openings (68) each having a top edge border and a supporting member (70) rotatably coupled to the tray and pivotable into a position located below the openings (Fig. 1). Lorence does not teach the openings being rectangular. Dickey discloses a beverage container holder including a rectangular opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the openings to be rectangular in shape because one would have been motivated to provide a holder for rectangular beverage containers as taught by Dickey (Claim, lines

1-2). Lorence also fails to disclose a plurality of resilient fingers extending inwardly within the openings. Miller discloses a beverage container holder (Fig. 2) comprising two openings (31,41) having a top edge and at least four resilient fingers (35,45) extending therein. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the openings by including at least four fingers therein because one would have been motivated to provide a means for snugly holding a container to the holder as taught by Miller (col. 2, lines 23-30). Lorence in view of Dickey in view of Miller teaches the holder as applied above, but does not disclose the fingers being generally V-shaped. Wang discloses a beverage container holder (Fig. 2) including a plurality of springy retaining members (2) having a generally V-shaped profile when viewed in a vertical plane with the point of the V extending towards a central opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the holder by substituting the retaining members of Wang because one would have been motivated to permit secure gripping of the cup while also permitting easy removal as taught by Wang (col. 2, lines 7-22).

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lorence in view of Dickey in view of Miller in view of Wang, and further in view of U.S. Patent 4,530,480 to Pratt. Regarding claim 22, Lorence in view of Dickey in view of Miller in view of Wang discloses the beverage container holder as applied above, but does not disclose the supporting member (70) being spring biased into the position located below the opening. Pratt discloses a container holder (Fig. 2) having a spring means (60) for

biasing a support member (44) into a lowered position. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the holder by including a spring means because one would have been motivated to permit removal of the beverage container and positioning of the support member for collapse for storage as taught by Pratt (col. 5, lines 2-11).

### ***Response to Arguments***

Applicant's arguments with respect to claims 18 and 21-23 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 1/22/02 have been fully considered but they are not persuasive. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Dickey teaches the motivation for providing a rectangular holder for beverage containers (see rejection above).

In response to Applicant's argument that the retaining members of Wang do not have a V-shaped profile, examiner respectfully disagrees. In the broadest interpretation of the claim, the retaining members are *generally* V-shaped as claimed.



In response to applicant's argument that the examiner's conclusion of obviousness (of the unitary construction) is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account *only knowledge which was within the level of ordinary skill at the time the claimed invention was made*, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).


### **Conclusion**

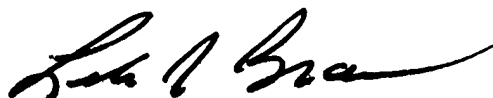
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

6253975 to Ichioka et al. discloses a cup holder.  
6290063 to Vogt et al. discloses an adjustable beverage holder.  
6299116 to Levesque discloses a pot support.  
6302364 to Chiueh discloses a container holder.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine telephone number for the Technology Center is (703) 305-3598 (formal amendments) or (703) 308-3686 (informal amendment/communication).

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 308-2168.

  
Naschica S. Morrison  
Patent Examiner  
Art Unit 3632  
3/8/02

  
LESLIE A. BRAUN  
SUPERVISORY PATENT EXAMINER